EUROPEAN FORUM FOR RESTORATIVE JUSTICE
Connecting People to Restore Just Relations

Subject: European Forum for Restorative Justice (EFRJ) briefing paper on the use of restorative justice in cases of violence against women (VAW)

The European Forum for Restorative Justice (EFRJ) is the leading network organisation in Europe in the field of restorative justice. Strengthened by research findings as well as practice experiences, we believe that each victim should have the possibility to freely and voluntarily decide to start a safe and high quality restorative justice process. We fully understand that there is scepticism and objections coming from a variety of organisations working with victims of VAW concerning the use of restorative justice in these cases. The concerns often involve safety, accountability and the relegation of violence against women to the private sphere. But the overlap of concerns and shared principles between feminist and restorative justice approaches to crime indicates that there exists the potential to develop restorative processes to the needs of victims of gendered crimes.

The aim of this briefing paper is to address key aspects of restorative justice and its application in cases of VAW, such as sexual and domestic violence. It seeks to clarify concerns, highlight evidence-based practices, and emphasize the need for safeguards and high-quality standards to ensure restorative justice processes are safe, voluntary, and empowering for victims. Additionally, it examines the implications of Article 48 of the Istanbul Convention, advocating for its correct interpretation to ensure it does not unintentionally hinder access to restorative justice for victims.

What is restorative justice

> "*Restorative justice refers to any process which enables those harmed by crime, and those responsible for that harm, if they freely consent, to participate actively in the resolution of matters arising from the offence, through the help of a trained and impartial third party (hereinafter the "facilitator")*".
>
> Article 3, Recommendation CM/Rec(2018)8 of the Committee of Ministers to member States concerning restorative justice in criminal matters

Restorative justice is one form of innovative justice that can complement the criminal justice mechanisms to improve the justice responses for victims of crime. Restorative justice allows for a better understanding and healing of the different dimensions of the harm caused by crime; increases the perpetrator's sense of responsibility for the offense and towards victim's needs; provides a means for victims to talk about how the incident impacted them; provides an opportunity for the victim to ask questions and receive information from the perpetrator; provides an opportunity for the victim to receive reparation; gives victims an opportunity to take back power and maximises the opportunity to access to justice for victims, perpetrators and the community.

> *"Restorative justice is voluntary and shall only take place if the parties freely consent, having been fully informed in advance about the nature of the process and its possible outcomes and implications, including what impact, if any, the restorative justice process will have on future criminal proceedings. The parties shall be able to withdraw their consent at any time during the process".*
>
> Article 16, Recommendation CM/Rec(2018)8 concerning restorative justice

Restorative justice is always based on the informed and free consent of all participants. The voluntary nature of participation is always carefully checked by specifically trained professionals before entering any restorative process

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and during it. In particular, they can include specific assessment of VAW victims and perpetrators, especially to recognise signs of coercive control, manipulation, power imbalances and any other sign of lack of safety for the victim. In case of any risk or abuse, the facilitator will immediately stop the restorative justice process, with particular focus on the victim's safety.

> *"Other key restorative justice principles include: voluntariness; deliberative, respectful dialogue; equal concern for the needs and interests of those involved; procedural fairness; collective, consensus-based agreement; a focus on reparation, reintegration and achieving mutual understanding; and avoiding domination".*
>
> Article 14, Recommendation CM/Rec(2018)8 concerning restorative justice

Any restorative justice process should be based on basic values and principles and should adhere to evidence-based standards of good practice. Standards of restorative justice processes are defined in many international documents. Besides the above-cited CoE Recommendation CM/Rec(2018)8 concerning restorative justice, the UN Basic Principles on restorative justice(2002) encourages UN Member States to establish guidelines and standards that set out the use of restorative justice practices appropriate to their legal systems. The Victims' Directive (2012) of the European Union is the first legally binding international legal instrument that sets basic rules concerning restorative justice in criminal matters. A core objective of the EFRJ is to support policy makers and managers to integrate the values into practice and to ensure high-quality restorative justice practices. See in this regard the EFRJ's "Manual on Restorative Justice Values and Standards for Practice".

> *"Affirming the positive impact of restorative justice on reducing recidivism and noting the ample empirical evidence which proves that restorative justice is effective and produces satisfactory results for the parties of the conflicts concerned and, beyond that, for a community as a whole".*
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> Preamble, Declaration of the Ministers of Justice of the Council of Europe member States on the role of restorative justice in criminal matters, December 2021

Research findings tell us that victims and offenders have a much more satisfactory experience of justice with restorative justice than with the formal, traditional criminal justice process. Studies consistently state that restorative processes improve closure and healing for victims and achieve a very high percentage of satisfaction among victims, having an empowering effect and reducing their fear of further harm and reducing post-traumatic stress symptoms[1]. Research furthermore confirms that restorative justice encourages desistance from offending, decreases recidivism and increases compliance with restitution when compared to other traditional criminal justice processes Findings indicate that restorative justice processes are suited to both perpetrators of serious crime[2] and low-risk offenders.[3]

[1] European Forum for Restorative Justice. (2017). *Effectiveness of restorative justice practices: An overview of empirical research on restorative justice practices in Europe*. European Forum for Restorative Justice. Leuven. Belgium. Retrievable here.

[2] Shapland, J., Robinson, G., & Sorsby, A. (2011). Restorative justice in practice: Evaluating what works for victims and offenders. London and New York: Routledge Taylor & Francis Group.

[3] Bonta, J., Jesseman, R., Rugge, T., & Cormier, R. (2006). Restorative justice and recidivism: Promises made, promises kept? In D. Sullivan & L. Tifft (Eds.) Handbook of Restorative Justice: A Global Perspective. London and New York: Routledge Taylor & Francis Group.

Restorative justice practices

Restorative justice offers a variety of practices where involved parties engage in a respectful, facilitated dialogue over specific questions, mostly about the harm, responsibility and restoration. Restorative justice practices such as victim-offender mediation, conferencing, circles and surrogate programmes are used in Europe and beyond. The practices are flexible enough to accommodate the specific needs or concerns of the parties involved, they are often co-designed with the victims who are facilitated to be in control of every step of the process. To increase physical safety, particularly in cases of VAW, restorative justice can take the form of indirect (letter writing), shuttle (sharing information through a facilitator), or surrogate (having a third party represent one of them). In this way the victim and offender do not meet. However it is clear that many victims wish to meet with the person who has harmed them direclty as they are the only person who can answer some of the questions that they have. A direct meeting can not be risk free, but studies have shown that most of the risks can be mitigated by specially trained and experienced facilitators.[4] Restorative practices may be used also to help the victim to adress the issue with their own family members or community of care, not involving the offender at all. This is especially valuable in cases of abuse within the family context.

What restorative justice is not

Restorative justice **it is not a method for achieving reconciliation, forgiveness or conflict resolution**. It should be distinguished from conflict mediation or family mediation. It should never be used to pressure or manipulate women into accepting an oppressive or harmful relationship.

Restorative justice is not a form of re-privatisation of the violence, as violence against womenin general, including domestic violence must always be framed, understood and responded to within its structural/public as well as its particular individual and private context. Restorative justice in these cases must be facilitated by trained facilitators who also understand the dynamics of sexual and domestic violence. The restorative process can take part within, in parallel to or following a criminal justice process.

It is extremely important to stress that **restorative justice processes should not replace criminal justice procedures** in these cases. Restorative justice aims to give choice back to victims who wish to approach their situation from a different or multiple perspectives, to seek closure as well as justice and to ensure that their voice is heard.

Restorative justice is not an alternative dispute resolution method as it is not based upon a rational negotiation process that seeks a tangible outcome or agreement, unless this is desired by the parties.

Restorative justice in VAW cases: voices of the survivors

> *"For some [survivors], they might realise that restorative justice is the journey that they need to take, and some might realise it isn't what they need. Both outcomes are okay; the essence of restorative justice lies in its voluntary nature".*
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> Testimony from a survivor of sexual violence, EFRJ (2024). From survivors to survivors. Conversations on restorative justice in cases of sexual violence. Leuven: European Forum for Restorative Justice

[4] Shapland, J., Buchan, J., Kirkwood, S, & Zinsstag, E. (2022) Mitigation and Risk in Restorative Justice. Report to Scottish Government. Available here: mitigation-risk-report-final-version-to-scottish-government.pdf (rjforum.scot)

Restorative justice is not suitable for every victim of violence against women and domestic violence, but we believe that if the woman makes the free choice to explore participating in a restorative process, that choice should be respected and considered, especially when the formal criminal justice system cannot address all that matters to specific victims.

As research and standards of best practice continue to improve, the benefits that a restorative process can have for victims of domestic or sexual abuse are becoming increasingly recognised and appreciated[5]. However, there is no word more compelling than the word of a survivor. We would like to invite to listen to the voices of survivors of VAW who have taken part in restorative justice and let them speak about the experience in their own words:

1. From survivors to survivors. Conversations on restorative justice in cases of sexual violence Leuven: European Forum for Restorative Justice (2024)

This collection is one of the outputs of the EFRJ Working Group on Gender-Based Violence (2020-2022) of the European Forum for Restorative Justice. It collects testimonies of restorative justice in cases of sexual violence and gives a voice to survivors who wished to share their experience of a restorative justice process in such cases.

2. Using restorative approaches for domestic and sexual abuse: A personal choice Why Me? October 2021

This paper builds on academic research, the testimony of Why me? ambassadors (i.e. survivors of domestic and sexual abuse), and existing good practice to unpick the benefits, concerns and best practice for using restorative approaches in cases of domestic and sexual abuse.The organisation gives voice to survivors who experienced restorative justice in its website as well as in the above mentioned paper. The benefits of restorative justice heard from survivors include:

- - It was the beginning of the rest of Lucy's life.
- - It was the key that unlocked Janika's future.
- - It allowed Rosalyn to regain her sense of power and control.
- - It made Wendy feel like a totally different person.
- - It gave Teresa a different picture of herself, which benefits her whole life.

(Please note that if you would like to use publicly these testimonies above, you need to ask permission from Why me?.)

3. The testimony of Ailbhe Griffith, a survivor of sexual violence, on her restorative justice experience: https://vimeo.com/449684172

4. Below is a list of relevant films with testimonies on restorative justice in VAW cases. Please note that most of these material are not free for access but that we can support in getting access to them:

   - Bidegain, Maiana (2019). Film: Rencontre avec mon agresseur. More info: www.film-documentaire.fr/4DACTION/w_fiche_film/56520_
   - Gilsenan, Alan (2018). Film: The Meeting. Retrievable on: www.themeetingfilm.com

[5] For an extensive list of references on restorative justice and VAW see here and here.
Also, Keenan, M & Zinsstag, E. (2022). Sexual violence and restorative justice: addressing the justice gap. Oxford: Oxford University Press.
- Chapman T., Restorative Justice: offering access to justice for victims of gender based violence (2023). In Access to Justice: a Gender Perspective, edited by Bonini V. and Stradella E., Rivista di diritti comparati, Special Issue IV (2023) (pp. 208-227)
- Restorative Justice in Cases of Domestic Violence. Best practice examples between increasing mutual understanding and awareness of specific protection needs. (JUST/2013/JPEN/AG/4587) WS1. Comparative Report. Available here: https://www.verwey-jonker.nl/wp-content/uploads/2020/07/7388_restorative-justice-in-cases-of-domestic-violence-2.pdf

- Herry, Jeanne (2023). Film: Je verrai toujours vos visages. More info: www.allocine.fr/film/fichefilm_gen_cfilm=299938.html
- Jackman, Lawrence & Khan, Attiya (2017). Film: A Better Man. Retrievable on: www.abettermanfilm.com
- No Theatre (2017). Film / Theatre play: A Conversation. Retrievable on: www.euforumrj.org/en/film-a-conversation
- Power, Geoffe (2021). Theatre play: Stronger. More info: www.gunanua.com/2021/08/stronger-by-geoff-power-2021
- Thordis, Eva & Stranger, Tom (2016). TED talk: Our story of rape and reconciliation. Retrievable on: www.ted.com/talks/ thordis_elva_and_tom_stranger_our_story_of_rape_and_reconciliation
- Vera, Zahy (2023). Dance performance: No, gracias: Danzas a una niña rota. More info: www.zahyvera.com/no-gracias/

Art. 48 of the Istanbul Convetnion and restorative justice

Article 48 of the Istanbul Convention sets a prohibition of mandatory alternative dispute resolution processes, including mediation and conciliation, concerning to all forms of violence covered by the Convention.
Art. 48 bans **mandatory mediation,** which is a practice very far from the restorative justice practice of mediation in criminal cases**. Mediation as practised in the framework of restorative justice** - which must be distinguished from civil mediation and is not called mediation but restorative justice in some European jurisdictions when referring to criminal matters - **is always based on informed, free and ongoing consent and will of all participants**, as it is provided and practised on the base of the Recommendation 2018/8 of the Council of Europe on restorative justice in criminal matters as well as it is defined in the EU Victims' Rights Directive (Article 2).

As explained above, "face to face" mediation is just one possible restorative justice practice. Other practices, such as indirect mediation (i.e., shuttle mediation, surrogate victims etc.), circles and conferences, are also used in cases of sexual or domestic violence and can include the participation of others affected by the harm (family members, friends, representatives of the community). Moreover, restorative justice it is not a method for achieving conciliation nor an alternative dispute resolution tool.

We conclude **that the Istanbul Convention does not deal with, nor refer to, restorative justice.** Indeed, neither the Convention nor the Explanatory Report mentions restorative justice in its text. Still, art. 48 of **the Istanbul Convention is generating relevant disruptions in many countries** in Europe regarding the use of restorative justice in cases of violence against women, including domestic violence, preventing victims who feel the need/wish to access restorative justice services from doing so. Some policymakers part from a misinterpretation of this article of the Istanbul Convention to prohibit the use of restorative justice in regional and national legislations, such as the recent case of the new law on restorative justice in Navarra, Spain[6]. This prevents certain victims from accessing restorative justice, even if they ask for it, putting them at risk of further victimisation (e.g if they were to do it on their own or by being denied agency over their own recovery).

We would like to recall that the **Council of Europe does not limit access to restorative justice in cases of domestic violence or violence against women.** For instance, the CoE Recommendation on restorative justice in criminal matters

[6] Ley Foral of Restorative Justice, Mediation and Community Restorative Practices (2023): http://www.lexnavarra.navarra.es/detalle.asp?r=55774

(2018/8) states that "*restorative justice should be a generally available service at all stages of the criminal justice process and for all types of crime*" (Rules 18 and 6). Also, the recent CoE Recommendation (2023/2) on victims' rights states that "*type and seriousness of the offense, or its geographical location, should not in themselves, and in the absence of other considerations, preclude restorative justice from being offered*" (rule 18). Finally, the CoE Recommendation (2021/6), regarding the assessment, management and reintegration of persons accused or convicted of a sexual offense**,** states that "*participation in restorative justice interventions, where available and appropriate, should be facilitated by providing information on the nature, relevance and availability of these interventions*" (rule 33). These elements, and those related to the will to advance the development of restorative justice in Europe, are also contained in the (2021/12) CoE Venice Declaration on restorative justice[7], unanimously adopted by the Justice Ministers of all CoE Member States.

The UN Second Edition of the Handbook on Restorative Justice Programmes (2020) states that, since sexual crimes have low reporting, prosecution and conviction rates, restorative justice can provide the opportunity for the victim to access justice services when other processes may be less likely to occur. Very significantly the UN Handbook recognises the risk of secondary victimisation and that the "***vulnerability of victims of sexual violence raises concerns about if, when and how to approach the topic of restorative justice with them***" but that "***failing to discuss the possibility of restorative justice with the victims may deprive them of an opportunity to heal***".

CONCLUSION

The EFRJ has been working intensively to advocate for the general availability of restorative justice for all victims who wish to access these services. More precisely, the EFRJ advocates for the need to:

1) **Secure the availability of restorative justice for victims of VAW,** their right to be informed about the existence of these services and the opportunity to freely choose to participate or not, within and beyond criminal procedures, taking into account their individual needs**;**
2) Establish and guarantee provisions related to **safeguards and high standards** of practice for restorative justice services dealing with cases of VAW.

The EFRJ is very happy to be contacted to discuss any of these points further and for sending relevant research findings, evidence-based data and references to European and international documents on restorative justice and its use in cases of violence against women and domestic violence.

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[7] Declaration of the Ministers of Justice of the Council of Europe Member States on the role of restorative justice in criminal matters : https://www.coe.int/en/web/portal/-/crime-and-criminal-justice-the-role-of-restorative-justice-in-europe-conference-of-justice-ministers-in-venice